

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| In the Matter of Adak Eagle         | ) |                     |
| Enterprises, LLC d/b/a              | ) |                     |
| Adak Telephone Utility Petition for | ) | CC Docket No. 96-45 |
| Waiver of the Commission's Rules to | ) |                     |
| Obtain Accelerated USF Support and  | ) |                     |
| to Participate in NECA Pools and    | ) |                     |
| Tariffs                             | ) |                     |

**Comments of the  
Regulatory Commission of Alaska**

Date: June 10, 2005

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/s/  
Kate Giard, Chairman  
Regulatory Commission of Alaska

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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|--|---|---------------------|
| In the Matter of Adak Eagle Enterprises, LLC     | ) |                     |
| d/b/a Adak Telephone Utility Petition for Waiver | ) | CC Docket No. 96-45 |
| of the Commission's Rules to Obtain              | ) |                     |
| Accelerated USF Support and to Participate in    | ) |                     |
| NECA Pools and Tariffs                           | ) |                     |

**Comments of the Regulatory Commission of Alaska to Waiver  
Requests**

These comments are submitted in response to Public Notice DA 05-1544, seeking comment on the petition filed by Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility (AEE) to obtain accelerated Universal Service Fund (USF) support and participation in NECA pools and tariffs.

**1. Providing Universal Service Funding to AEE is in the Public Interest.**

The Regulatory Commission of Alaska (RCA) appreciates the long standing commitment of the Federal Communications Commission (Commission) to ensure universal service throughout the nation, including remote areas of rural Alaska. We ask for Commission assistance in the matter of AEE given that the utility currently has local exchange rates exceeding \$100 per month. To the extent federal universal service funding to AEE can be expedited, such support would help citizens experience more affordable rates and assist AEE in making necessary improvements to its network.

AEE is a newly formed telephone company serving an isolated community on Adak Island, 1200 miles southwest of Anchorage, Alaska. On a seasonal basis, AEE serves from 65 to 160 access lines and is a rural carrier as defined by 47 U.S.C. § 153(37). We granted AEE a temporary certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications services on October 8, 2004. AEE's service is provided using an outdated and in certain instances, a deteriorated network previously run by the military. As a certificated, regulated local exchange carrier, AEE is faced with accomplishing system upgrades and replacement to provide modern, reliable telecommunications services in an area that is expensive to serve. AEE has been providing service on Adak using the existing telecommunications network since September of 2003. No other telecommunications carrier has expressed interest in providing service to Adak's citizens. On October 8, 2004, we approved interim and refundable residential service rates of \$100 per month. (U-03-76(1)). We required AEE to take steps to reduce its rates as soon as practicable, including submitting an application to us for Eligible Telecommunications Carrier (ETC) status. AEE has complied with all of our requirements. It would serve the public interest for AEE to receive USF support as soon as possible.

2. The Commission Should Grant Any Needed Waiver of Study Area Definition to Allow AEE Access to USF.

Among other things, AEE (an average schedule company for state purposes) requested waiver of the definition of "study area" contained in the

Appendix Glossary of Part 36 of the Commission's rules. AEE is not requesting a change to an existing study area but rather to have its certificated service area serve as the ETC service area for purposes of determining USF support. While we do not think it was necessary for AEE to file for such waiver, we support its request. Through Order U-04-109(1) (Appendix A) we earlier granted ETC status to AEE for its certificated service area which is, for all practical purposes, AEE's study area.

3. The Commission Should Grant AEE's Request for Accelerated USF Support to the Extent Appropriate.

As noted above, AEE is providing local exchange services on a high cost, rural, remote island in Alaska. AEE's network requires upgrades and repairs. Its rates are the highest in the state and possibly the nation. Adak Island is a community deserving USF support for access to reliable and affordable telecommunications services. We respectfully urge the Commission to consider AEE's petition and grant the requests therein, allowing AEE to receive USF support for whatever period is appropriate and as soon as possible.

4. AEE Has Obtained Necessary State Certification Regarding Proper Use of USF in 2005.

Commission rules provide that carriers for which state certifications of support are filed on or before July 1 may receive support in the fourth quarter of that year. CFR 54.314(d)(4). We designated AEE as an ETC on May 25, 2005. In designating AEE as an ETC for purposes of USF support, we required the carrier to use such funding to provide rate relief and for facilities improvements. We

submitted our certification of AEE's use of 2005 high cost support by separate letter to the Universal Service Administrative Company, a copy of which is attached (Appendix B). We will evaluate whether we should certify AEE's appropriate use of 2006 funds when we evaluate all other regulated Alaska ETCs' compliance with Section 254(e).

AEE has petitioned the Commission for waiver of certification filing deadlines so that it might receive USF funding from January 1, 2005. We respectfully request the Commission consider AEE's petition and grant support as soon as possible for the earliest appropriate period.

#### Conclusion

In summary, we appreciate the Commission's time and consideration of this request. We believe Adak is the type of community for which USF support was designed. We do not oppose AEE's request for waiver of the "study area" definition and we request the Commission's assistance in expediting USF support for AEE.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of June, 2005.

\_\_\_\_\_  
/s/  
Kate Giard, Chairman  
Regulatory Commission of Alaska  
701 West 8<sup>th</sup> Avenue, Suite 300  
Anchorage, Alaska 99501-3469  
Telephone: 907-276-6222

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman  
Dave Harbour  
Mark K. Johnson  
Anthony A. Price  
James S. Strandberg

In the Matter of the Application by ADAK EAGLE )  
ENTERPRISES, LLC d/b/a ADAK TELEPHONE )  
UTILITY for Designation as an Eligible )  
Telecommunications Carrier )

U-04-109

ORDER NO. 1

ORDER GRANTING  
ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS  
AND REQUIRING FILINGS

BY THE COMMISSION:

Summary

We designate Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility (AEE) as an eligible telecommunications carrier (ETC) for purposes of receiving state and federal universal service funding. We require AEE to advertise its services and to file annual reports to certify its proper use of universal service fund (USF) monies.

Background

We granted AEE a temporary certificate of public convenience and necessity for authority to provide local exchange telecommunications

1 service on Adak in Docket U-03-76, and we required AEE to file for ETC status.<sup>1</sup> AEE  
2 submitted a request for designation as an ETC throughout its certificated service area  
3 on November 22, 2004, and filed the Affidavit of Larry Mayes attesting that it is offering  
4 or arranging to offer the basic nine services required by 47 C.F.R. 54.101(a).<sup>2</sup> At the  
5 time of its application, AEE was unable to offer three of the nine required services.

6 We issued a public notice of the application on December 10, 2004, with a  
7 date of January 10, 2005, for filing of comments. We received no comments.

8 On December 20, 2004, AEE filed a notice in Docket U-03-76 indicating  
9 the utility was offering the three required services not previously offered: operator  
10 services, directory assistance services, and toll limitation for qualifying low-income  
11 customers.<sup>3</sup> AEE stated that it now offered all nine services required for universal  
12 service support.

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18 <sup>1</sup>Order U-00-137(9)/U-03-76(1), *Order Conditionally Approving Application:  
19 Approving Tariff, in part; Granting Temporary Certificate; Revoking Temporary  
20 Operating Authority; Closing Docket U-00-137; and Requiring Filings*, dated October 8,  
21 2004. Docket U-00-137 is entitled *In the Matter of the Application by Adak Telephone  
22 Utility for a New Certificate of Public Convenience and Necessity*. Docket U-03-76 is  
23 entitled *In the Matter of the Application by ADAK EAGLE ENTERPRISE LLC d/b/a  
24 ADAK TELEPHONE UTILITY for a Certificate of Public Convenience and Necessity to  
25 Provide Local Exchange Service in Alaska*.

26 <sup>2</sup>We opened Docket U-04-109 to consider AEE's request for ETC designation  
and transferred these filings into the new docket.

<sup>3</sup>*Notice of Availability of Remaining Supported Services*, filed December 20,  
2004, in Docket U-03-76.

Discussion

Under the Telecommunications Act of 1996,<sup>4</sup> state commissions must decide whether applications for ETC status should be granted.<sup>5</sup> Federal law requires us to apply the following criteria to our evaluation of AEE's request for ETC status:<sup>6</sup>

- Has AEE demonstrated that it owns at least some facilities?
- Has AEE demonstrated a capability and commitment to provide the nine basic services required by Federal Communications Commission (FCC) regulation?<sup>7</sup>
- Has AEE demonstrated it will appropriately advertise its services?
- Has AEE clearly defined the service area for which it seeks ETC status and is that area reasonable?

<sup>4</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) amending the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (the Act).

<sup>5</sup>47 C.F.R. § 54.201.

<sup>6</sup>The criteria applicable to AEE as an incumbent local exchange carrier are derived from Section 214(e)(1) of the Telecommunications Act of 1996 which provides:

(1) A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(E) advertise the availability of such services and the charges therefore using media of general distribution.

<sup>7</sup>The nine basic services are defined at 47 C.F.R. § 54.101.



1 Ownership of Facilities

2 AEE has been the local exchange services provider on Adak Island since  
3 departure of the U.S. military in the fall of 2000.<sup>8</sup> AEE is in the process of upgrading  
4 and maintaining the plant used to provide the telecommunications facilities on Adak and  
5 so meets the requirements of Section 214(e) that an ETC own at least some facilities  
6 used to provide service.<sup>9</sup>

7 Nine Basic Services

8 AEE affirmed it currently provides the nine basic services required for USF  
9 support to all of its customers.<sup>10</sup> AEE stated its customer base is currently located in  
10 the city core area but anticipates future development in outlying areas. In its recent  
11 local exchange certification docket,<sup>11</sup> AEE provided us with an engineering report and  
12 full explanation of its ability to serve. Further, AEE is the only carrier serving Adak, and  
13 while we have no record of complaints regarding failure to serve, AEE anticipates  
14 having the capability to serve future customers in outlying areas once it receives funding  
15 for network replacement and upgrades. We determine that AEE has demonstrated the

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17 <sup>8</sup>AEE managed the telephone utility services for Adak Reuse Corporation (ARC),  
18 a local redevelopment authority set up to facilitate reuse of the Adak Naval Complex.  
19 On September 19, 2003, the Commission approved a transfer of temporary operating  
20 authority from ARC to AEE. See Order U-00-137(8), *Order Finding Request for*  
21 *Extension of Time Moot, Vacating Filing Requirement, and Granting Request for*  
22 *Transfer of Temporary Operating Authority*, dated September 19, 2003.

23 <sup>9</sup>On March 17, 2004, the land and improvements of the Adak Naval Complex  
24 were transferred to the Aleut Corporation. AEE has obtained a long-term lease of  
25 existing facilities but states it will own future additions and improvements. See *Petition*  
26 *for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to*  
*Participate in NECA Pools and Tariffs*, filed February 9, 2005, with the FCC in  
CC Docket No. 96-45 at 5.

<sup>10</sup>AEE filed the Affidavit of Larry Mayes attesting to provisioning of the nine basic  
services in support of this application.

<sup>11</sup>See Docket U-03-76.

1 capability to offer the nine basic services throughout its service area upon reasonable  
2 request.

3 Advertisement of Services

4 Section 214(e)(1)(B) of the Act<sup>12</sup> requires an ETC to advertise the  
5 availability of the nine basic services (including Link Up and Lifeline)<sup>13</sup> and the charges  
6 for the services using "media of general distribution." As we have routinely done in  
7 designating ETC status to carriers, we require AEE to advertise its services as follows:

- 8 1. once every two years, perform community outreach through appropriate  
9 community agencies by notifying those agencies of AEE's available services;
- 10 2. once every two years, post a list of services on a school or community  
11 center bulletin board;
- 12 3. once a year, provide a bill stuffer indicating available services; and
- 13 4. once a year, advertise services through the newspaper circulated in the  
14 locations served by AEE.

14 Service Area

15 Section 214(e)(5) of the Act provides that we shall designate the ETC  
16 service area for the purpose of determining universal service obligations and support  
17 mechanisms. In the case of rural carriers, the service area is defined as the carrier's  
18 study area unless or until the FCC and the States, after consultation with a Federal-  
19 State Joint Board, establish a different definition.

20 AEE currently serves 150 access lines and is defined as a rural carrier  
21 under 47 U.S.C. § 153(37). It is unclear whether AEE has a "study area" since the  
22 U.S. military rather than a certificated carrier previously provided the  
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24 <sup>12</sup>See n.4.

25 <sup>13</sup>Link Up is described at 47 C.F.R. § 54.411, and Lifeline is described at  
26 47 C.F.R. § 54.405.

1 telecommunications services on Adak.<sup>14</sup> AEE is an average schedule company and  
2 therefore does not perform the jurisdictional analysis for which study areas were  
3 designated. We have previously approved ETC status for an average schedule  
4 company's certificated service area rather than its study area,<sup>15</sup> and we believe it is  
5 consistent with the intent of federal law to do so in this case. We acknowledge that AEE  
6 has petitioned the FCC for waiver of the "study area" definition, in case such waiver is  
7 needed, to allow AEE's certificated service area to be designated as its service area for  
8 purposes of determining USF support. We support AEE's request, and we therefore  
9 designate AEE's certificated local exchange service area as its ETC service area.

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23 <sup>14</sup>Technically, the term "study area" refers to the geographic area over which a  
company keeps its books for purposes of performing a jurisdictional separations study.

24 <sup>15</sup>See Docket U-97-190, *In the Matter of the Request by NORTH COUNTRY*  
25 *TELEPHONE, INC., for Designation as a Carrier Eligible To Receive Federal Universal*  
26 *Service Support Under the Telecommunications Act of 1996.*

1 Additional Federal Criteria

2 We have previously required ETC applicants to meet additional  
3 requirements identified by the FCC in its March 17, 2005 Report and Order.<sup>16</sup> As a  
4 regulated local exchange carrier (LEC), AEE is already subject to these requirements  
5 under our regulations. AEE is required to provide equal access upon receipt of a  
6 bona fide request and adhere to our regulations regarding consumer protection and  
7 service quality standards. AEE has stated in its certification application that its central

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17 <sup>16</sup>See *Federal-State Joint Board on Universal Service*, Report and Order, CC  
Docket No. 96-45, FCC 05-46, rel. March 17, 2005 (Report and Order).

18 See Report and Order at ¶ 2. An ETC applicant must:

- 19 1. file a five-year plan detailing how high cost universal service support will  
20 be used to improve coverage, service quality or capacity in every wire center  
for which they seek ETC designation;
  - 21 2. demonstrate the ability to remain functional in emergency situations by  
22 having backup power, having the ability to reroute traffic around damaged  
facilities, and being capable of handling traffic spikes.
  - 23 3. demonstrate they will satisfy consumer protection and service quality  
standards;
  - 24 4. offer a local usage plan comparable to incumbent LEC services; and
  - 25 5. acknowledge that they may be required to provide equal access.
- 26

1 office has an operational battery reserve of roughly 12 hours<sup>17</sup> which exceeds our  
2 requirement.<sup>18</sup>

3 In Docket U-03-76, AEE filed an engineering report and a copy of its  
4 RUS<sup>19</sup> loan application detailing network improvements proposed for a five-year  
5 period.<sup>20</sup> We consider this plan, in addition to the LEC requirements to file capital  
6 program and planning statements with annual reports,<sup>21</sup> to be sufficient at this point to  
7 fulfill the intent of the federal requirement for a five-year plan.

#### 8 ETC Designation and Certification

9 In AEE's local exchange certification docket, we required<sup>22</sup> AEE to apply  
10 for membership in AECA<sup>23</sup> and NECA<sup>24</sup>. AEE joined the AECA pool effective  
11 January 1, 2005, and also filed with the FCC to participate in NECA.

12 With these determinations, we designate AEE as an ETC for the purpose  
13 of receiving state and federal universal service funds. Further, we annually open a  
14 proceeding and require information from all ETCs for purposes of making a certification  
15 to the FCC that universal service funds are being used for the purposes intended. We  
16 require this information from all ETCs whether economically regulated by us or not. As

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18 <sup>17</sup>*Submittal of Revised Application for a Certificate of Public Convenience and  
Necessity*, filed March 25, 2004, in Docket U-03-76 at 8.

19 <sup>18</sup>See 3 AAC 52.270(b).

20 <sup>19</sup>Rural Utility Service (RUS).

21 <sup>20</sup>*Submission of Tariff Filings and Updated Engineering Studies in Compliance  
with U-03-76(2) and Additional Financial Information*, filed January 3, 2005, in Docket  
22 U-03-76.

23 <sup>21</sup>See 3 AAC 52.330.

24 <sup>22</sup>See n.1.

25 <sup>23</sup>Alaska Exchange Carriers Association, Inc. (AECA).

26 <sup>24</sup>National Exchange Carriers Association, Inc. (NECA).

1 an ETC, AEE is required to provide the information requested of all ETCs when we  
2 open our proceeding in the near future.

3 This order constitutes the final decision in this proceeding. This decision  
4 may be appealed within thirty days of the date of this order in accordance with AS  
5 22.10.020(d) and the Alaska Rules of Court, Rule of Appellate Procedure (Ak. R. App.  
6 P.) 602(a)(2). In addition to the appellate rights afforded by AS 22.10.020(d), a party  
7 has the right to file a petition for reconsideration as permitted by 3 AAC 48.105. If such  
8 a petition is filed, the time period for filing an appeal is then calculated under Ak. R. App.  
9 P. 602(a)(2).

10 **ORDER**

11 **THE COMMISSION FURTHER ORDERS:**

12 1. The application filed by Adak Eagle Enterprises, LLC d/b/a Adak  
13 Telephone Utility requesting designation as a carrier eligible is approved, enabling it to  
14 receive federal universal service support under the Telecommunications Act of 1996 for  
15 the service area for which it is temporarily certificated under Certificate of Public  
16 Convenience and Necessity No. 702.

17 2. By July 1, 2005, Adak Eagle Enterprises, LLC d/b/a Adak Telephone  
18 Utility shall comply with the advertising requirements as set out more fully in the body of  
19 this order, and file evidence of that compliance with the Commission.  
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Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533

1 3. Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility shall file  
2 responses to our requests for information in our proceeding concerning annual  
3 certification of use of funds to the Federal Communications Commission.

4 DATED AND EFFECTIVE at Anchorage, Alaska, this 25th day of May, 2005.

5 BY DIRECTION OF THE COMMISSION  
6 (Commissioners Kate Giard and Anthony A. Price,  
7 not participating.)  
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# STATE OF ALASKA

DEPARTMENT OF COMMERCE  
COMMUNITY AND ECONOMIC DEVELOPMENT  
REGULATORY COMMISSION OF ALASKA

**FRANK H. MURKOWSKI, GOVERNOR**

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June 10, 2005

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

Irene Flannery  
Vice President - High Cost and Low Income Division  
Universal Service Administrative Company  
2120 L Street, NW – Suite 600  
Washington, DC 20037

Re: CC Docket No. 96-45  
State Certification of USF Funds in Rural Areas

Dear Mses. Dortch and Flannery:

This letter is submitted pursuant to 47 CFR § 54.314(a), which requires state certification of the use of federal universal service funds as a prerequisite for continued receipt of funding by rural carriers. The Regulatory Commission of Alaska (RCA) governs local services and rates in Alaska and is the appropriate authority to issue the certification required under Section 54.314(a).

We designated Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility (AEE) as an eligible telecommunications carrier (ETC) on May 25, 2005. In designating AEE as an ETC for purposes of USF support, we required the carrier to use such funding to provide rate relief and for facilities improvements. We certify that to the best of our knowledge and efforts, all federal high cost support that may be received by AEE in 2005 will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act. We will



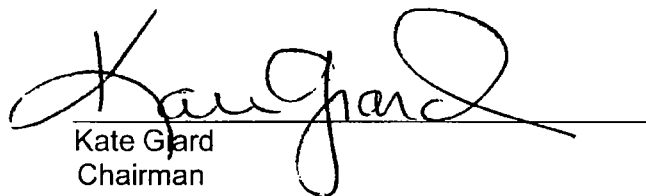


June 10, 2005

evaluate whether we should certify AEE's appropriate use of 2006 funds when we evaluate all other regulated Alaska ETCs' compliance with Section 254(e).<sup>1</sup>

Section 54.314(d)(4) of the Commission's rules provides that carriers for which certifications are received on or before July 1 will receive support in the fourth quarter of that year but shall not receive funding for the first 3 quarters of the year.<sup>2</sup> AEE has petitioned the Commission for waiver of certification filing deadlines under 47 CFR § 54.314(d) so it might receive USF funding from January 1, 2005. We respectfully request the Commission consider AEE's petition and grant support as soon as possible for whatever period is appropriate.

Sincerely,  
REGULATORY COMMISSION OF ALASKA



Kate Gard  
Chairman

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<sup>1</sup> Our certification does not preclude us from reviewing in further detail how AEE has employed its federal universal service funds and ordering that use of funds comply with directives or policies we may set. Our certification is based on best data available as of May, 2005. Our decision does not bind us in future or pending cases and we reserve the right to conclude that a company should employ its universal service funding differently than it does today or in the future in light of better data or a more detailed review.

<sup>2</sup> Support pursuant to Sec. 54.301, 54.305, and or 54.